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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

EGB GROUP, INC., et al.,

Cross-Complainants and  
Appellants,

v.

FAMILY MORTGAGE OPTIONS,  
LLC,

Cross-Defendants and  
Respondents.

B272467

(Los Angeles County  
Super. Ct. No. YC069066)

APPEAL from a judgment of the Superior Court of  
Los Angeles, Stuart M. Rice, Judge. Affirmed.

Anderson, McPharlin & Conners and William R. Larr for  
Cross-Complainants and Appellants.

Teeple Hall, Grant G. Teeple and Frederick M. Reich for  
Cross-Defendants and Respondents.

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Defendants and cross-complainants EGB Group, Inc. (EGB) and Sandra Valentine, Trustee of the Sandra Lee Valentine 1998 Revocable Living Trust, (Valentine)<sup>1</sup> appeal from a judgment of dismissal based on an order granting codefendant and cross-defendant Family Mortgage Options, LLC's (Family Mortgage) motion for a good faith settlement determination and request for dismissal of EGB's remaining cross-claims under Code of Civil Procedure section 877.6 (section 877.6).<sup>2</sup>

Plaintiff Brigid O'Brien, an elder, alleged that she sold her Manhattan Beach home to Family Mortgage based on Family Mortgage's representations that it could help her avoid foreclosure. She further alleged Family Mortgage designed the transaction so that O'Brien would default on her obligations to Family Mortgage, thereby permitting Family Mortgage to resell the property for a quick profit. Indeed, that Family Mortgage resold O'Brien's home to EGB, which then resold it to a third party for nearly double its purchase price, is undisputed.

O'Brien also alleged that EGB was aware of her age and financial predicament, was represented in the transaction by the

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<sup>1</sup> Although Valentine is named as an appellant, her cross-claims were not asserted against Family Mortgage and therefore are not at issue on appeal.

<sup>2</sup> Section 877.6 provides a procedure for trial courts to review settlement agreements between plaintiffs and defendants for good faith in multi-defendant cases to encourage settlement and ensure equitable sharing of the costs of the plaintiff's loss among multiple wrongdoers. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 495 (*Tech-Bilt*).) Generally, a finding that the settlement was made in good faith bars other defendants' indemnity claims against the settling defendant.

same real estate broker who represented Family Mortgage, and intentionally encouraged Family Mortgage to expedite the transaction so that she would be unable to exercise her right of first refusal conferred by her contract with Family Mortgage.

O'Brien sued Family Mortgage, EGB, and other defendants for fraud, financial elder abuse, intentional interference with contract, quiet title, and related claims. EGB, in turn, cross-complained against Family Mortgage for breach of contract and related claims because Family Mortgage did not deliver clear title but instead, title subject to O'Brien's adverse claim.

Family Mortgage settled its dispute with O'Brien and obtained a good faith settlement determination from the trial court. The trial court then dismissed EGB's cross-claims against Family Mortgage under section 877.6.

EGB contends that dismissal of its cross-claims was error because section 877.6 does not apply to them. EGB reasons (1) it is not a joint tortfeasor or co-obligor with Family Mortgage because EGB and Family Mortgage could not be liable to O'Brien on the same cause or causes of action, and EGB does not seek indemnification on any of O'Brien's claims on which O'Brien named EGB as a codefendant with Family Mortgage; (2) its cross-claims are independent of O'Brien's claims because they are based on duties Family Mortgage owed to EGB uniquely and are therefore not for indemnification; and (3) those duties are based on contract or statute, thus rendering its cross-claims exempt from section 877.6. EGB further contends it is entitled to recover its attorney fees as damages incurred in defending O'Brien's adverse title claim.

We conclude section 877.6 applies to EGB's cross-claims on the following grounds: (1) EGB was a joint tortfeasor with

Family Mortgage because O'Brien alleged that they together caused her to lose her home; (2) EGB's causes of action against Family Mortgage are disguised indemnity claims because they are based on the same facts as O'Brien's claims and we infer the trial court considered Family Mortgage's and EGB's proportionate liability in determining that Family Mortgage's settlement with O'Brien was made in good faith; and (3) EGB's indemnity claims are not based on express contract or statute because EGB does not allege the existence of an applicable contract or statute that provides for such indemnification. Accordingly, we affirm.

### **FACTUAL BACKGROUND<sup>3</sup>**

#### **A. Family Mortgage Entered Into An Agreement With O'Brien Purportedly To Help Her Avoid Foreclosure On Her Home**

Family Mortgage is in the business of buying residential real properties from homeowners facing foreclosure. O'Brien was such a homeowner.

Family Mortgage initiated contact with O'Brien through its agent, Crystal Mason. Mason falsely told O'Brien that Family Mortgage (1) was an expert in helping homeowners avoid foreclosure; (2) could assist her in curing her default; (3) could prepare documents that she could sign that would allow her to continue to own and reside in her home; (4) would hold a deed to

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<sup>3</sup> In our discussion of the relevant facts, we set forth O'Brien's allegations in her operative third amended complaint and the undisputed facts stated in EGB's and Family Mortgage's trial court and appellate briefs.

the property as security for its loan; (5) would return the deed unrecorded if she repaid the loan; and (6) would give her proper notice and a reasonable opportunity to repay the loan before recording the deed or otherwise conveying the property to a third party.

Family Mortgage enlisted codefendant, Razmik Zadorian, a real estate broker, and his companies, codefendants Rockwell Properties and Real Estate Raz Enterprises, Inc., to assess the property's then current value, which Zadorian advised was about \$600,000.

Subsequently, another Family Mortgage agent and codefendant, Raymond Gutierrez, met with O'Brien to have her sign several documents, which he described to her as containing legal "mumbo-jumbo" that she would not understand. At Gutierrez's urging, O'Brien signed the documents, including what they called the equity purchase agreement, by which she accepted \$500 plus 30 percent of the proceeds of any resale, and which required Family Mortgage to make all good faith efforts to resell the property at market price including by listing and marketing the property.

O'Brien and Family Mortgage entered into addendum E, which was a leaseback agreement that allowed O'Brien to rent the property from Family Mortgage. They also entered into addendum F, which gave O'Brien the right to repurchase the property from Family Mortgage for \$57,000, which, as written in the addendum, was O'Brien's estimated share of equity obtained from a future resale of the property. In fact, Family Mortgage intended to induce O'Brien to transfer the property without consideration, assess substantial undisclosed transaction fees, record documents memorializing the conveyance without notice

to O'Brien, sell the property at below fair market value to make a quick profit, and make no reasonable efforts to market or resell the property at market value.

Gutierrez returned about a week later with two notaries and had O'Brien execute a grant deed in Family Mortgage's favor. That grant deed was subsequently altered to indicate O'Brien conveyed the property to Family Mortgage as a "Gift" for "\$0 Consideration."

**B. O'Brien Defaulted On Her Leaseback Agreement With Family Mortgage, Which Then Foreclosed On O'Brien's Home And Sold It To EGB, Which In Turn Sold O'Brien's Home To A Third Party For Nearly Double Its Purchase Price**

The following month, O'Brien defaulted on her rent payment to Family Mortgage under the leaseback agreement, which was greater than her mortgage payment on which she had earlier defaulted. Later that month, Family Mortgage and codefendant Advantage Title recorded the grant deed without notice to O'Brien in violation of addendum F.

On Family Mortgage's request, Zadorian again valued the property at \$600,000. Zadorian represented both Family Mortgage as seller and EGB as buyer. Zadorian told EGB that O'Brien was (1) entitled to a percentage of the profits of a resale; (2) a non-paying tenant; and (3) the property's former owner.

Several months later, O'Brien's friend contacted Family Mortgage on O'Brien's behalf to express concerns about Family Mortgage's efforts to dispose of the property. The same day, Family Mortgage prepared and served a notice of acceleration and demand for immediate possession of the property for O'Brien's failure to pay rent. Thus, Family Mortgage

“rushed to sell the Real Property to . . . EGB . . . in a reckless, commercially unreasonable, collusive and bad faith manner and in violation of the Equity Purchase Agreement.”

Eight days later, EGB was incorporated by its owner, sole shareholder, and alter ego, codefendant Edward Badro, who entered into a promissory note for \$210,000 in favor of Valentine, which note was recorded the following month. Badro had a business relationship with Gutierrez, whereby Badro would pay Gutierrez a finder’s fee upon reselling the property.

EGB then entered into an agreement with Family Mortgage to purchase the property for \$600,000, and received a grant deed (EGB grant deed), which was subsequently recorded. The agreement contained the following attorney fees provision: “ ‘In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer and Seller.’ ” EGB also executed and recorded a deed of trust in Valentine’s favor (Valentine deed of trust). Family Mortgage failed to give O’Brien notice of its intent to convey the property to EGB.

Based on the public records and Zadorian’s dual agency, EGB knew or should have known of the following: Family Mortgage’s agreements with O’Brien; the property’s fair market value far exceeded \$600,000; the sale would cause Family Mortgage to breach its agreements with O’Brien; and Family Mortgage did not acquire title through a proper foreclosure sale or similar process.

Fifteen days after securing title from Family Mortgage, EGB entered into an agreement to sell the property to Zivec Construction, Inc. (Zivec) for \$1,190,000.<sup>4</sup>

Subsequently, O'Brien attempted to rescind her agreements with Family Mortgage. In response, EGB filed an unlawful detainer action against O'Brien to gain access to and control over the property.<sup>5</sup> O'Brien died shortly after she settled with some of the defendants. We set forth those settlements in subsection C below.

## **PROCEDURAL BACKGROUND**

### **A. O'Brien Sued Family Mortgage, EGB, And Other Defendants For Wrongful Foreclosure, Fraud, Financial Elder Abuse, Interference With Contract, And Other Causes Of Action**

O'Brien sued Family Mortgage, EGB, Valentine, Badro, Zadorian, Gutierrez, Mason, Advantage Title, and other

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<sup>4</sup> According to O'Brien's operative complaint, in a separate lawsuit, Zivec sued EGB, Valentine, and Family Mortgage for specific performance, breach of contract, and quiet title, claiming its agreement with EGB was enforceable. The superior court related that lawsuit to this action. The record is unclear on that lawsuit's status. We note the trial court's minute order regarding an order to show cause re: dismissal as to all previously settled matters states, "the only remaining aspect of this case is" Gutierrez's cross-complaint against Family Mortgage. We describe that cross-complaint in our discussion of the procedural background below.

<sup>5</sup> The record does not indicate the unlawful detainer action's status, except that O'Brien's operative complaint stated that it was stayed.



defendants for (1) violation of Home Equity Sales Contract Act (Civ. Code, § 1695, et seq.), (2) wrongful foreclosure, (3) violation of Mortgage Foreclosure Consultants Act (*id.*, § 2945, et seq.), (4) declaratory relief, (5) cancellation of deeds, (6) quiet title, (7) intentional fraud, (8) negligent misrepresentation, (9) breach of contract, (10) rescission of contract, (11) financial abuse of an elder, (12) recovery of usurious interest, (13) equitable redemption of plaintiff's interest in property, (14) violation of Business and Professions Code section 17200, (15) intentional interference with contract, and (16) slander of title.

Family Mortgage, EGB, and Valentine were codefendants on the fourth, fifth, sixth, eleventh, thirteenth, and fourteenth causes of action, which were respectively for declaratory relief, cancellation, quiet title, financial elder abuse, equitable redemption, and violation of Business and Professions Code section 17200.

O'Brien asserted the first, second, third, seventh, eighth, ninth, tenth, and twelfth causes of action, respectively for violation of Home Equity Sales Contract Act, wrongful foreclosure, violation of Mortgage Foreclosure Consultants Act, fraud, negligent misrepresentation, breach of contract, rescission, and recovery of usurious interest, against Family Mortgage but not EGB.

O'Brien asserted the fifteenth cause of action for intentional interference with contract against EGB and Valentine but not Family Mortgage.<sup>6</sup>

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<sup>6</sup> We set forth O'Brien's factual allegations specific to the interference cause of action in subsection A of our discussion below.

**B. EGB Cross-Complained Against Family Mortgage;  
Other Defendants Also Cross-Complained**

EGB cross-complained<sup>7</sup> against Family Mortgage and its alleged managing member and alter ego, Steve DeuPree, for breach of contract, unjust enrichment, and violation of Civil Code section 1113.<sup>8</sup> EGB alleged that it entered into a written contract with Family Mortgage and DeuPree for the purchase of O'Brien's home, including title free of liens, encumbrances, title defects, and adverse claims, for \$600,000. Family Mortgage breached that agreement by conveying title subject to O'Brien's adverse claim.

Also, EGB and Valentine collectively cross-complained against O'Brien for quiet title, declaratory relief, and imposition of equitable subrogation liens. They based their claims on allegations that EGB held title free and clear of any adverse claim because of the recorded EGB grant deed, and EGB and Valentine had no knowledge of O'Brien's adverse claim until after they had acquired the property and the EGB grant deed and Valentine deed of trust were recorded.

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<sup>7</sup> EGB's operative pleading was its first amended cross-complaint.

<sup>8</sup> Civil Code section 1113 implies into "any conveyance by which an estate of . . . fee simple is to be passed, the following [two] covenants . . . : [¶] 1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; [¶] 2. That such estate is at the time of the execution of such conveyance free from encumbrances . . . . [¶] Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance."

Family Mortgage cross-complained against Zadorian for negligence, breach of fiduciary duty, and indemnification, alleging that Zadorian failed to advised it properly on the property's fair market value.

Gutierrez cross-complained against Family Mortgage for indemnification, apportionment of fault, declaratory relief, unpaid wages, and unpaid commissions.

**C. Family Mortgage And Other Defendants Settled With O'Brien**

O'Brien and Family Mortgage settled their dispute for a \$200,000 payment to O'Brien. O'Brien, EGB, and Valentine settled their dispute with O'Brien with a \$400,000 payment to O'Brien and EGB retaining title to the property. O'Brien and Zadorian settled their dispute for a \$450,000 payment to O'Brien. Gutierrez and Family Mortgage did not settle their dispute.<sup>9</sup>

**D. The Trial Court Granted Family Mortgage's Motion For A Good Faith Settlement Determination And Dismissed EGB's Cross-Claims**

Family Mortgage then brought a motion for determination of good faith settlement and request to dismiss EGB's cross-

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<sup>9</sup> As noted above, the trial court's minute order on an order to show cause re: dismissal as to all previously settled matters states that Gutierrez's claims were the only ones remaining after the other parties' settlements. We further note that upon relating Gutierrez's case, the trial court reassigned "the unresolved Cross-complaint of Gutierrez" to a different trial judge after EGB filed a peremptory challenge under Code of Civil Procedure section 170.6.

claims.<sup>10</sup> EGB did not oppose that motion on the grounds that the settlement was not in good faith. Accompanying the motion were Family Mortgage's counsel's declaration, which purportedly authenticated documents concerning the underlying property transactions and authenticated deposition transcripts; a lodgment of exhibits containing those documents; and DeuPree's declaration, which also authenticated documents concerning the underlying property transactions and recited the basic facts concerning Family Mortgage's interactions with O'Brien and Zadorian.

DeuPree also stated that, after O'Brien defaulted on her rent payments and when Family Mortgage requested a second valuation from Zadorian, Zadorian indicated that EGB was interested in buying the property. DeuPree further indicated Family Mortgage sold the property to EGB for \$600,000 under a written agreement, and that after various monies were paid through escrow, "full clear title was conveyed to EGB"; and EGB subsequently entered into a contract to sell the property to Zivec for \$1,190,000.

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<sup>10</sup> Family Mortgage actually brought two such motions, both of which EGB opposed. The two sets of motions and opposition papers raised the same arguments and were virtually identical. The record does not indicate whether Family Mortgage filed a reply brief on either motion below. Our account of the procedural background refers to the second motion and opposition, including the extent to which these documents incorporated by reference the first motion and opposition. In its motions, Family Mortgage also sought to dismiss Gutierrez's cross-claims. The record does not indicate the outcome of that request.

Family Mortgage argued that section 877.6 precluded EGB's cross-claims because Family Mortgage's settlement with O'Brien was made in good faith, EGB's cross-claims were for indemnification, and "[b]ut for O'BRIEN's claims against both [Family Mortgage] and EGB, none of EGB's claims against [Family Mortgage] would exist."

Specifically, regarding EGB's cross-claim for breach of contract, Family Mortgage argued EGB could not seek damages other than its litigation costs incurred in defending O'Brien's lawsuit because Family Mortgage conveyed good title and EGB retains good title. Additionally, Family Mortgage and EGB's positions were aligned in that both parties maintained that the chain of title from O'Brien was valid. Further, Family Mortgage and EGB's contractual attorney fees provision was not " 'particularly clear and explicit' " and thus was not exempt from section 877.6's bar on claims for implied and equitable indemnification.

Family Mortgage characterized EGB's cross-claim for violation of Civil Code section 1113 as "seek[ing] damages EGB suffered as a result of defending against [O'BRIEN's] claims" and argued that cross-claim "is directly linked to O'BRIEN's claims against both [Family Mortgage] and EGB."

Finally, Family Mortgage argued EGB's unjust enrichment cross-claim was moot because, by the time of the good faith settlement motion, EGB held clear title by virtue of the parties' settlements with O'Brien, EGB would be entitled only to its attorney fees and costs if anything, and this cross-claim was not independent or distinct, but rather a disguised indemnity claim, because "[b]ut for O'BRIEN's claims, [it] would not exist."

In opposition, EGB argued section 877.6 did not preclude its cross-claims because O'Brien's operative complaint did "not contain any causes of action in which [Family Mortgage] and EGB would be liable to [O'Brien] as joint tortfeasors or co-obligors on a contract, with the possible exception of certain of [O'Brien]'s 'non-title' causes of action for which EGB's [operative first amended cross-complaint] does not seek recovery from [Family Mortgage]." EGB explained, "For example, EGB's claim against [Family Mortgage] for Breach of Contract seeks recovery of the amounts EGB was required to pay [O'Brien] to remedy [Family Mortgage]'s breach of its contractual duty to convey clear title to EGB, \$400,000.00, plus attorneys' fees EGB incurred to defend its title to the Subject Property against [O'Brien]'s adverse claims. This is not a claim against [Family Mortgage] as a co-obligor of some tort or contractual duty to [O'Brien], but an entirely independent and direct claim on the purchase contract between EGB and [Family Mortgage], with which [O'Brien] had no involvement." EGB further argued Family Mortgage and EGB could not have been liable to O'Brien on her title claims because, by the time O'Brien commenced her lawsuit, Family Mortgage "had divested itself of any interest in the subject property."

EGB contended its cross-claims against Family Mortgage were not for indemnification because EGB did not assert that it was entitled to contribution for claims on which Family Mortgage and EGB were jointly liable to O'Brien, and EGB's claims were not derivative of O'Brien's claims. EGB reasoned its claims were based on the defective title that Family Mortgage conveyed to EGB and EGB did nothing to cause the defects. Finally, EGB argued it was entitled to recover the \$400,000 it paid in settlement to O'Brien to obtain clear title, as well as the attorney

fees it incurred to defend O'Brien's adverse title claim because Family Mortgage was contractually, equitably, and statutory obligated to deliver clear title. EGB characterized its attorney fees claim as for damages, not indemnification.

The trial court granted Family Mortgage's motion<sup>11</sup> and subsequently entered a judgment of dismissal of EGB's cross-complaint. EGB timely appealed that judgment.

### STANDARD OF REVIEW

"Whether the trial court's determination of a good faith settlement under . . . section[ ] . . . 877.6 bars claims for contribution and indemnity . . . is a question of law, which we review de novo." (*Fullerton Redevelopment Agency v. Southern California Gas Co.* (2010) 183 Cal.App.4th 428, 432.)

Although no party raises the issue of appealability, " 'we are dutybound to consider' the question of appealability because it implicates our jurisdiction." (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9.) We observe case law holding that pursuant to section 877.6, subdivision (e),<sup>12</sup> the only procedure

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<sup>11</sup> No minute order reflecting this proceeding appears in the record. We nevertheless proceed because the record contains the parties' trial court briefs, which sufficiently apprise us of the issues and arguments raised below, and EGB does not argue the record is inadequate. We requested a copy of the minute order from the parties and the superior court. The records we received from the superior court predate the hearing on the good faith settlement motion, and the parties were also unsuccessful in obtaining a copy of the minute order from the superior court.

<sup>12</sup> Section 877.6, subdivision (e) states, "When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination

available to a party wishing to challenge “the merits of a good faith settlement determination” is to seek a writ of mandate or appeal after the denial of a writ of mandate. (See, e.g., *O’Hearn v. Hillcrest Gym & Fitness Center, Inc.* (2004) 115 Cal.App.4th 491, 499; *Main Fiber Products, Inc. v. Morgan & Franz Ins. Agency* (1999) 73 Cal.App.4th 1130, 1136.) We understand “the merits of a good faith settlement determination” to refer to a trial court’s determination that a settlement was in good faith based on the factors set forth in *Tech-Bilt, supra*, 38 Cal.3d at p. 499.

Here, the record does not reflect that EGB sought a writ of mandate before filing this appeal. Nevertheless, EGB does not challenge the trial court’s good faith determination. Instead, EGB seeks review of trial court’s dismissal of its cross-claims on the theory that section 877.6 does not apply to them.<sup>13</sup> Accordingly, this appeal is properly before us.

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may petition the proper court to review the determination by writ of mandate.”

<sup>13</sup> Any claim of error engendered by the trial court’s dismissing EGB’s cross-complaint without a separate motion requesting such a dismissal is forfeited on appeal because EGB did not object below on this ground. (*Norco Delivery Service, Inc. v. Owens-Corning Fiberglas, Inc.* (1998) 64 Cal.App.4th 955, 963 (*Norco*).)



## DISCUSSION

Family Mortgage repeats the arguments it made below in arguing section 877.6 does not apply to its cross-claims.

“Under section 877.6, if the injured party settles with one of the parties alleged to have caused its damages and the settlement is confirmed to be in good faith ‘other joint tortfeasors (parties who the injured party also alleges to have caused its damage) are barred from bringing equitable indemnity or contribution actions against the settling tortfeasor.’” (*Gackstetter v. Frawley* (2006) 135 Cal.App.4th 1257, 1271 (*Gackstetter*).)<sup>14</sup> “[S]ection 877.6, subdivision (c) should be interpreted so as to encourage settlements.” (*Gackstetter*, at p. 1271.)

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<sup>14</sup> Section 877.6 states in relevant part, “Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors.” (§ 877.6, subd. (a)(1).) It further states, “A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.” (*Id.*, subd. (c).)

**A. EGB Is A Joint Tortfeasor With Family Mortgage Under Section 877.6 Because O'Brien Alleged That Both EGB And Family Mortgage Caused The Loss Of Her Home**

For section 877.6's bar to indemnity claims to apply, the party seeking indemnification must be a joint tortfeasor or co-obligor with the party seeking to avoid its indemnity obligation. (*Gackstetter, supra*, 135 Cal.App.4th at p. 1274 ["A good faith settlement would not preclude a claim by a tortfeasor who committed a tort separate and distinct from the tort committed by the settling tortfeasor."].)

"Joint tortfeasors are 'concurrent tortfeasors (defendants whose independent negligence or other tortious acts have concurred to cause plaintiff's injury)' and 'those derivatively or vicariously liable for the settling defendants' acts.'" (*Gackstetter, supra*, 135 Cal.App.4th at pp. 1271-1272, italics omitted.) "[W]hen the negligence of both tortfeasors 'concurred to produce the sum total of the injuries to the plaintiff,' section 877.6 applies." (*Gackstetter*, at p. 1272.) "'Joint tortfeasors may act in concert or independently of one another.'" (*Ibid.*) "'In many cases courts have construed the term 'joint tortfeasor,' as used in . . . section[ ] . . . 877.6, quite broadly to apply not only to 'those who act in concert in causing an injury' [citation] but generally to 'joint, concurrent and successive tortfeasors' [citations], and even more generally to 'all tortfeasors joined in a single action' whose acts or omissions 'concurred to produce the sum total of the injuries to the plaintiff.' '" (*Gackstetter*, at p. 1272.) "'Joint tortfeasors' have been referred to as 'two or more persons who are liable to the same person for the same harm. It is not necessary that they act in concert or in pursuance

of a common design, nor is it necessary that they be joined as defendants.’” (*Id.* at pp. 1272-1273.) “[T]he Supreme Court suggested that the term joint tortfeasor as used in section 877.6 has a broad meaning.” (*Gackstetter*, at p. 1272.)

Both parties cite *Gackstetter* on the issue of a party’s joint tortfeasor status under section 877.6. In that case, section 877.6 precluded the indemnity claim of a trustee against an attorney, each of whom was sued by certain trust beneficiaries for breach of fiduciary duty and legal malpractice respectively. (*Gackstetter*, *supra*, 135 Cal.App.4th at pp. 1261-1262.) The attorney prepared an estate plan, including two trusts, and provided legal services to the trustee in his capacity as trustee of those trusts. (*Ibid.*) The attorney had mistakenly transferred certain real property to the wrong trust. (*Id.* at p. 1261.) For the trustee’s part, he improperly maintained trust records and misappropriated trust funds by mortgaging the property and keeping the loan proceeds for himself. (*Ibid.*)

The trustee separately sued the attorney for indemnification, alleging the attorney improperly advised him of his duties as trustee and concealed the incorrect conveyance. (*Gackstetter*, *supra*, 135 Cal.App.4th at pp. 1263-1265.) The attorney then settled with the beneficiaries and obtained a good faith settlement determination under section 877.6, which determination he asserted on summary judgment as an affirmative defense to the trustee’s indemnity claim. (*Gackstetter*, at pp. 1262-1263.) The trial court rejected the attorney’s affirmative defense. (*Id.* at p. 1263.)

The appellate court reversed. It concluded that the trustee and beneficiaries based their claims against the attorney on the attorney’s having conveyed the property to the wrong trust.

Additionally, the beneficiaries alleged the trustee committed financial impropriety with respect to that property. (*Gackstetter, supra*, 135 Cal.App.4th at pp. 1277-1278.) Thus, the beneficiaries had “characterized [the trustee] as a joint tortfeasor” with the attorney. (*Id.* at p. 1277.) Further, “[a]ll of [the trustee]’s alleged damages from the operation of the trusts, and actions against him by the trust beneficiaries . . . result[ed] from the acts and omissions of [the attorney] and [trustee].” (*Id.* at pp. 1278-1279.) Stated differently, the trustee and attorney’s “acts and omissions . . . concurred to produce ‘the sum total of the injuries to the [beneficiaries].’” (*Id.* at p. 1278.) Therefore, the attorney’s “acts and omissions alleged by [the trustee], in effect, constituted acts and omissions by [the trustee] and by [the attorney] as joint tortfeasors directed at the trusts and their beneficiaries.” (*Ibid.*)

Similarly here, O’Brien alleged that both Family Mortgage and EGB’s conduct caused the loss of her home. EGB knew O’Brien was elderly and in financial distress, the property was in foreclosure when Family Mortgage took title, the purchase price was artificially low, and Family Mortgage was obligated to make all reasonable efforts to resell the property at market price, including by listing and marketing the property.

Family Mortgage purposefully had not listed the property for sale or otherwise marketed it, and Family Mortgage was selling the property to EGB at far below market price, in breach of Family Mortgage’s contractual obligations to O’Brien.

Additionally, Zadorian and his companies were the agents for both Family Mortgage and EGB. Thus, Zadorian’s knowledge of the form and substance of Family Mortgage’s contracts with O’Brien was imputed to EGB.

O'Brien further alleged EGB "engaged in" the recording of the EGB grant deed and Valentine deed of trust "to create the impression that . . . EGB . . . with the financial assistance of [Valentine] were bona fide purchasers from [Family Mortgage] of the Property, thus further violating and depriving [O'Brien] of her right to repurchase the Property from [Family Mortgage] as expressly provided in Addendum F of" the equity purchase agreement. (*Italics omitted.*)

Thus, O'Brien alleged that EGB's acts, along with Family Mortgage's alleged fraud, wrongful foreclosure, and other misconduct, caused her to lose her home initially, and further deprived her of her home when she had an opportunity to repurchase it from Family Mortgage under addendum F. Family Mortgage's alleged misconduct "concurred with" EGB's alleged misconduct to cause O'Brien's injury. Further, both O'Brien's and EGB's claims against Family Mortgage are based on Family Mortgage's allegedly defrauding O'Brien; it was Family Mortgage's alleged fraud that gave rise to O'Brien's adverse claim to the property and that underlies both O'Brien's and EGB's causes of action. Accordingly, the source of the title defect about which EGB complains against Family Mortgage is identical to Family Mortgage's alleged fraud and other misconduct that O'Brien alleged to have caused her to lose her home.

EGB argues that it was not a joint tortfeasor or co-obligor with Family Mortgage because O'Brien's operative complaint "does not contain any causes of action in which [Family Mortgage] and EGB would be liable to [O'Brien] as joint tortfeasors or co-obligors based on comparative negligence or comparative fault." The test, however, is whether O'Brien

alleged EGB's and Family Mortgage's conduct caused the same harm (*Gackstetter, supra*, 135 Cal.App.4th at pp. 1272-1273) or, stated differently, whether EGB's and Family Mortgage's acts and omissions "concur[red] to produce 'the sum total of the injuries to . . . [O'Brien]' " (*id.* at p. 1278). As described above, O'Brien alleged that both EGB's and Family Mortgage's conduct caused her to lose her home. Whether O'Brien joined both EGB and Family Mortgage under the same cause or causes of action is not dispositive. (*Id.* at pp. 1272-1273.)

EGB also argues that even if it were a joint tortfeasor with Family Mortgage on some of O'Brien's claims, EGB was not seeking *any* indemnification on those claims. Specifically, EGB states that it might be considered a joint tortfeasor on O'Brien's financial elder abuse and unfair business practices claims, but it does not seek indemnification for those claims. EGB further reasons that its claims against Family Mortgage are based on the defective title Family Mortgage conveyed and Family Mortgage's separate contractual and statutory obligations to convey clear title to EGB. EGB also characterizes its claims against Family Mortgage as "direct" and not for contribution toward its liability to O'Brien on a joint duty.

As set forth above, EGB's arguments ignore that O'Brien alleged that both EGB's and Family Mortgage's conduct caused the very title defect about which EGB complains against Family Mortgage. Although EGB views O'Brien's "non-title" causes of action as separable from her "title" causes of action, they are inherently intertwined. As a matter of law, O'Brien had to assert a basis for the validity of her title claim and invalidity of EGB's title claim. (See, e.g., *Smith v. Williams* (1961) 55 Cal.2d 617, 619 [fraud is basis for cancellation of deed].) Further, as

noted above, O'Brien named EGB and Family Mortgage as defendants under her fourth, fifth, sixth, eleventh, thirteenth, and fourteenth causes of action, which were respectively for declaratory relief, cancellation, quiet title, equitable redemption, and violation of Business and Professions Code section 17200. These causes of action derived from O'Brien's underlying tort claims against EGB: the eleventh and fifteenth causes of action for financial elder abuse and interference respectively.

For example, under her fifth cause of action for cancellation, O'Brien alleged that Family Mortgage and EGB acted "with a specific intent to defraud and injure [her], by causing the [EGB grant deed and Valentine deed of trust] to be prepared and recorded without a factual or legal basis for doing so." Under her sixth cause of action for quiet title, O'Brien alleged, "EGB . . . purposely did not inquire of [her] regarding her disputes with [Family Mortgage] in a transparent effort to claim that EGB was a bona fide purchaser for value"; "Further, . . . EGB . . . knew or should have known that [Family Mortgage]'s conveyance to EGB was invalid by a simple review of the alleged O'Brien Grant Deed from [O'Brien] to [Family Mortgage] which recites 'Gift' and explicitly states that '0 consideration' was exchanged"; "Upon having obtained purported title to the Property from [Family Mortgage], . . . EGB . . . executed and caused to be recorded the [Valentine deed of trust] purportedly encumbering the Property."

Under the two tort causes of action, O'Brien alleged the recording of the EGB grant deed and Valentine deed of trust was "specifically designed and entered into to create the impression that . . . EGB . . . with the financial assistance of [Valentine] were

bona fide purchasers . . . thus further violating and depriving [O'Brien] of her right to repurchase the Property.” (Italics omitted.)

In sum, although EGB states that it does not seek indemnification for O'Brien's alleged tort claims, those tort claims are inseparable from EGB's claim that Family Mortgage conveyed bad title because O'Brien's tort claims against both Family Mortgage and EGB are the basis for O'Brien's adverse title claim. EGB's characterization of its claims is too narrow under the broad definition of joint tortfeasor and ignores the full scope of O'Brien's allegations, especially given that “section 877.6, subdivision (c) should be interpreted so as to encourage settlements.” (*Gackstetter, supra*, 135 Cal.App.4th at p. 1271.)

EGB cites *Hartford Accident & Indemnity Co. v. Superior Court* (1994) 29 Cal.App.4th 435 (*Hartford*) to support its argument that its claims against Family Mortgage are unrelated to comparative fault.<sup>15</sup> *Hartford* is distinguishable.

There, a defendant insurer sought indemnification from another defendant insurer that had obtained a good faith settlement determination in a construction defect lawsuit

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<sup>15</sup> EGB cites *Hartford* in its appellate brief under its argument that its claims against Family Mortgage are “direct” claims for damages, not indemnification. The issue in *Hartford*, however, was whether the codefendant insurers were joint tortfeasors. (*Hartford, supra*, 29 Cal.App.4th at p. 439 [subheading reads, “The Trial Court Erred in Applying Section 877.6 to This Action Because Hartford and Landmark Were Neither Joint Tortfeasors nor Co-Obligors on a Contract Debt.” (Italics and bold omitted).] Accordingly, we address *Hartford* here.



brought by a homeowners association. (*Hartford, supra*, 29 Cal.App.4th at pp. 437-439.) Section 877.6 did not bar the indemnity claim “[b]ecause an action by one insurer seeking contribution from a nonparticipating insurer does not depend on ‘fault’ concepts but is based on an equitable apportionment of the contractual undertakings.” (*Hartford*, at p. 441.) “Instead, each insurer’s defense and indemnification liabilities, if any, . . . depend on the terms and conditions of the policy of each, neither being liable for the policy obligations owed by the other.” (*Ibid.*) Moreover, “in cases involving multiple policies covering the same loss, the courts have allocated the burden of paying among several insurers without reference to questions of the comparative fault or negligence of such insurers, because their obligation to protect the insured arises from a contract, not because the insurers were negligent or at fault.” (*Id.* at p. 440, italics omitted.) For these reasons, which are unique to insurers’ liability, the two codefendant insurers in *Hartford* were not joint tortfeasors or co-obligors. (*Id.* at p. 439.)

In contrast, here O’Brien assigned fault to EGB and Family Mortgage for causing her to lose her home by fraudulently inducing her into the equity purchase agreement and causing, through tortious means, its breach. As the appellate court stated in *Gackstetter*, “Cases involving contribution or indemnity among insurance carriers are inapplicable because they do not depend upon fault concepts, and the liability is based upon different insurance policies.” (*Gackstetter, supra*, 135 Cal.App.4th at p. 1275, fn. 15 [citing *Hartford*].) Indeed, *Hartford* expressly limited its holding to “the issue [of] whether the protections afforded by section 877.6 apply when the lawsuit is brought by the insured against multiple insurers allegedly covering the same

‘loss,’ one insurer settles with the insured, and the settling insurer seeks to use the order approving the settlement (in good faith under section 877.6) to avoid cross-claims for contribution from other insurers.” (*Hartford, supra*, 29 Cal.App.4th at p. 438.)

In sum, we conclude EGB was a joint tortfeasor with Family Mortgage for the purposes of section 877.6. Because EGB was a joint tortfeasor and section 877.6 applies to joint tortfeasors or co-obligors, we do not address whether EGB was a co-obligor.

**B. EGB’s Causes Of Action Are Disguised Indemnity Claims Because They Are Equivalent To O’Brien’s Claims And The Trial Court Necessarily Considered The Parties’ Proportionate Share of Liability In Making The Good Faith Settlement Determination**

EGB contends section 877.6 does not bar its causes of action against Family Mortgage for breach of contract, violation of Civil Code section 1113, and unjust enrichment because they are “entirely independent and direct claim[s]” for damages, not indemnification, and section 877.6, subdivision (c) bars only claims “ ‘for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.’ ” EGB reasons that its claims are based on Family Mortgage’s contractual and statutory duty to convey clear title to EGB, not a joint contractual obligation or joint tort duty owed to O’Brien.

EGB further contends that its attorney fees claim is for damages resulting from Family Mortgage’s breach of contract with EGB because that breach caused EGB to defend its title against O’Brien. (See *Prentice v. North Amer. Title Guar. Corp.* (1963) 59 Cal.2d 618, 621 (*Prentice*) [“we are not dealing with ‘the

measure and mode of compensation of attorneys' but with damages wrongfully caused by defendant's improper actions."].)

We respectfully submit that EGB's analysis does not apply the proper test or case authority. "Allowing a joint tortfeasor to bring an affirmative claim for damages that is actually an artfully pleaded claim for indemnity would contravene [section 877.6's] purpose" to encourage settlement. (*Cal-Jones Properties v. Evans Pacific Corp.* (1989) 216 Cal.App.3d 324, 327 (*Cal-Jones*)). "Therefore, a trial court must have the discretion to ferret out those claims that are in fact claims for indemnity." (*Id.* at pp. 327-328.)

*Cal-Jones* sets forth the following test for identifying disguised indemnity claims: "If the claims between the joint tortfeasors are identical to those made by the plaintiffs or if the damages sought by the joint tortfeasors are those that the court would consider in determining the proportionate liability of the settling tortfeasor, then the claims are indemnity claims regardless of whether one or more of the claims are couched in affirmative language." (*Cal-Jones, supra*, 216 Cal.App.3d at p. 328.) The defendant seeking indemnification has the burden of producing evidence that it has valid, direct causes of action or "other-than-derivative damages." (*Norco, supra*, 64 Cal.App.4th at p. 964.)

*Cal-Jones* illustrates the test's application. There, homebuyers sued the sellers and the sellers' brokers for fraud, breach of fiduciary duty, breach of warranty of title, breach of the implied covenant of good faith and fair dealing, breach of contract, and negligent misrepresentation based on an allegation that the sellers and brokers knowingly misrepresented the subject condominium unit's size. (*Cal-Jones, supra*,

216 Cal.App.3d at p. 326.) The sellers, in turn, sued the brokers for indemnification and breach of fiduciary duty by failing to advise the buyers of the unit's actual size once it was discovered. (*Id.* at pp. 326-327.) The brokers cross-complained against the sellers for indemnification and comparative fault. (*Ibid.*) The brokers settled their dispute with the buyers and obtained a good faith settlement determination. (*Ibid.*)

By comparing the parties' theories of recovery, the court concluded the sellers' cross-claim for breach of fiduciary duty was for indemnification despite its label, "just as [the brokers]' indemnity action . . . was solely an indemnity action." (*Cal Jones, supra*, 216 Cal.App.3d at p. 329.) "[The brokers] claimed that [the buyers]' damages . . . were due to the negligence of [the sellers]. [The sellers], on the other hand, alleged that the [buyers]' damages resulted due to the [brokers]' breach of their fiduciary duty. [Thus, i]n both cases . . . indemnity liability rested on the identical failure to correctly represent the size of the condominium unit." (*Id.* at p. 328.) Although the sellers "asserted a separate cause of action for breach of fiduciary duty . . . , their entitlement to indemnification or contribution rests upon their ability to prove that [the brokers] breached their fiduciary duty. They . . . alleged no additional basis for their claim to equitable indemnity. Hence, the trial court, in assessing the proportionate liability of the parties to the [buyers] must have considered [the brokers]' potential liability for indemnity to [the sellers] based on [the sellers]' breach of fiduciary duty cause of action." (*Id.* at pp. 328-329.)

In *Gackstetter*, the appellate court concluded that the trustee's claims against the attorney were "in effect for indemnification" "although having different labels" because

“[e]ach of those causes of action is based on alleged damages [the trustee] suffered as a result of claims by the trust beneficiaries.” (*Gackstetter*, *supra*, 135 Cal.App.4th at pp. 1275-1276.)

*Gackstetter* explained that both the trustee’s and attorney’s acts and omissions “were directed at, and damaged, the trusts and their beneficiaries. According to [the trustee], his liability and expenses were due to [the attorney]’s acts and omissions as attorney for the trusts.” (*Id.* at p. 1276.)

Similarly here, O’Brien alleged that both EGB’s and Family Mortgage’s conduct caused her to lose her home. EGB, in turn, attributes its liability and damages resulting from O’Brien’s adverse title claim to Family Mortgage’s defrauding O’Brien. Thus, both O’Brien’s and EGB’s theories rest on proving Family Mortgage’s fraud and other misconduct directed toward O’Brien. EGB has not alleged any other factual basis for its alleged damages.

In ruling on a good faith settlement motion, a trial court must consider whether the settlement is in proportion to the settling parties’ potential liability to the plaintiff and to each other. EGB has not challenged the merits of the trial court’s finding that Family Mortgage’s settlement with O’Brien was in good faith. Although the record does not include a minute order on the trial court’s determination of the merits of the good faith settlement motion<sup>16</sup>, we nonetheless imply a finding that the settlement was in proportion to each of EGB’s and

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<sup>16</sup> As noted in footnote 11, *ante*, we requested, but did not receive, a copy of that minute order if it exists.

Family Mortgage's potential liability to O'Brien.<sup>17</sup> (*Cal-Jones, supra*, 216 Cal.App.3d at pp. 328-329; see *Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609 [trial court judgment presumed correct]; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58 [implied findings doctrine requires appellate court to infer trial court made all factual findings necessary to support judgment].)

EGB cites *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1315 (*Lyon*) for the proposition that a defendant's claims against a codefendant are not for indemnification when those claims arise from duties different from those owed to the plaintiff. *Lyon* is inapplicable because it was not decided under section 877.6.<sup>18</sup> We believe *Cal-Jones* and *Gacksetter* provide the applicable analytic framework, and under that framework, EGB's claims are disguised indemnity claims.

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<sup>17</sup> EGB's non-opposition to the merits of Family Mortgage's good faith settlement motion and this implied finding obviate EGB's assertion that dismissal of its cross-claims caused an inequitable result.

<sup>18</sup> EGB also relies on *Hartford, supra*, 29 Cal.App.4th 435 to suggest its claims are not for indemnification. *Hartford* is inapplicable for the reasons set forth in the previous subsection.

**C. EGB's Indemnity Claims Are Based On Equitable Or Implied Principles Because They Are Not Based On A Contract Or Statute That Expressly Provides For Indemnification**

EGB argues that section 877.6 does not encompass its indemnity claims because they are based on the following contract or statute: (1) its contract with Family Mortgage, which required Family Mortgage to deliver clear title; (2) Civil Code section 1113 which, by operation of law, implies essentially the same requirement into that contract; and (3) that contract's attorney fees provision.

"[A]n indemnity claim against a codefendant based on express contract [or statute] survives a good faith section 877.6 settlement." (*C. L. Peck Contractors v. Superior Court* (1984) 159 Cal.App.3d 828, 834 (*C. L. Peck*).)

A contractual indemnity obligation "may arise by virtue of express contractual language establishing a duty in one party to save another harmless upon the occurrence of specified circumstances. [Alternatively], it may find its source in equitable considerations brought into play either by contractual language not specifically dealing with indemnification or by the equities of the particular case." (*E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 506-507 (*E. L. White*).) Whether a contractual indemnity obligation is express depends on the "contractual language [under the] established rules of construction." (*Id.* at p. 507.)

Statutes are subject to the same inquiry. (See *Kantor v. Housing Authority* (1992) 8 Cal.App.4th 424, 429 [cause of action for indemnification under Government Code section 825, which expressly requires public entities to defend and reimburse their

employees in certain circumstances, not barred under section 877.6]; *City of Sacramento v. Gemsch Investment Co.* (1981) 115 Cal.App.3d 869, 877 [“The ordinances do not expressly create a right to indemnity nor do they seek to eliminate City’s liability for its own fault”].)

Here, EGB alleges its contract with Family Mortgage required Family Mortgage to “convey fee title to the Subject Property to EGB free and clear of any liens, encumbrances, defects in title or adverse claims.”<sup>19</sup> The implied covenants under Civil Code section 1113 impose essentially the same requirement. Thus, by their plain language, neither the contract nor the statute expressly establishes a duty by Family Mortgage to hold EGB harmless from or compensate EGB for liens, encumbrances, defects in title, or adverse claims.

To the extent EGB’s claim for attorney fees arises from the attorney fees provision in its contract with Family Mortgage, EGB’s attorney fees claim would also be classified as one for equitable or implied indemnification.<sup>20</sup>

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<sup>19</sup> EGB does not quote the contract or identify it with a citation to the appellate record. We believe we have nevertheless identified the contract in the record. We observe section 12.B states, contrary to EGB’s allegation, “Title is taken in its present condition subject to all encumbrances . . . and other matters, whether of record or not . . . .”

<sup>20</sup> As set forth in subsection B, *ante*, EGB urges that we should treat its attorney fees claim as one for consequential damages arising from Family Mortgage’s alleged breach of contract under *Prentice, supra*, 59 Cal.2d at p. 621. Specifically, EGB identifies the fees it seeks to recover as the “attorney’s fees [it] incurred to defend its title to the Subject Property against [O’Brien]’s adverse claims.” We apply the same analysis to this



Additionally, “[w]hen . . . the duty established by contract is . . . inapplicable to the particular factual setting before the court, the equitable principles of implied indemnity may indeed come into play.” (*C. L. Peck, supra*, 159 Cal.App.3d at p. 834, quoting *E. L. White, supra*, 21 Cal.3d at p. 508.)

Here, Family Mortgage and EGB’s contractual attorney fees provision states, “ ‘In any action, proceeding, or arbitration between Buyer [EGB] and Seller [Family Mortgage] arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer and Seller.’ ” The underlying litigation for which EGB seeks attorney fees was between O’Brien on one hand and Family Mortgage and EGB on the other hand; it was not “between Buyer and Seller.” Thus, the attorney fees provision is “ ‘inapplicable to the particular factual setting before’ ” us, and accordingly, only “ ‘equitable principles of implied indemnity . . . come into play.’ ” (*C. L. Peck, supra*, 159 Cal.App.3d at p. 834, quoting *E. L. White, supra*, 21 Cal.3d at p. 508; *Gackstetter, supra*, 135 Cal.App.4th at pp. 1264, 1276 [characterizing trustee’s contractual attorney fees claim as “ ‘a form of implied equitable indemnity’ that also can be barred by a good faith settlement”].)

Finally, we observe that EGB relies on insurance cases not applicable to section 877.6. (See *Fireman’s Fund Ins. Co. v. Maryland Casualty Co.* (1998) 65 Cal.App.4th 1279 [plaintiff insurer’s indemnity claim against coinsurers based on contribution, not subrogation, where only the plaintiff insurer

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attorney fees claim we set forth in the preceding subsection. We arrive at the same conclusion that section 877.6 precludes EGB’s cross-claims.

undertook the common insured's defense in underlying lawsuit, which defense the insured had tendered to all coinsurers]; *Lebet v. Cappobiancho* (1940) 38 Cal.App.2d Supp. 771<sup>21</sup> [no defense that plaintiff insured was fully compensated by insurer, and insurer is proper prosecuting party where insured assigned cause of action to insurer]; *American Title Co. v. Anderson* (1975) 52 Cal.App.3d 255 [subrogation action to recover settlement amount paid to homebuyers from sellers]; *Gackstetter, supra*, 135 Cal.App.4th at p. 1275, fn. 15 [insurance cases inapplicable to section 877.6].) Accordingly, EGB's indemnity claims are not based on express contract or statute and therefore are not exempt from section 877.6.

In sum, the trial court did not err in dismissing EGB's cross-claims against Family Mortgage. As did the trial court, we conclude section 877.6 bars those claims because EGB was a joint tortfeasor with Family Mortgage, and EGB's causes of action against Family Mortgage are disguised indemnity claims not based on express contract or statute.

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<sup>21</sup> We observe this superior court appellate department case is not binding on us. (*Singh v. Superior Court* (2006) 140 Cal.App.4th 387, 401, fn. 12.)

**DISPOSITION**

The judgment is affirmed. Family Mortgage is awarded its costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.